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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 JONATHAN GOLDMAN,

12 Plaintiff(s),

13 v.

14 AARON D. FORD, et al.,

15 Defendant(s).

Case No.: 2:19-cv-01457-RFB-NJK

**REPORT AND RECOMMENDATION**

16 Pending before the Court is Plaintiff's case-initiating documentation. *See* Docket No. 1.  
17 No filing fee was paid and no application to proceed *in forma pauperis* was filed. *See id.* In such  
18 circumstance, the Court would ordinarily require Plaintiff to pay the filing fee or file an  
19 application to proceed *in forma pauperis* before addressing the merits of his complaint. In an  
20 effort to avoid any potential prejudice to Plaintiff with respect to his ability to seek relief through  
21 appropriate means, however, the undersigned instead **RECOMMENDS** that this case be  
22 **DISMISSED** without prejudice at this time.

23 Courts screen complaints brought by prisoners against government entities or officials. *See*  
24 28 U.S.C. § 1915A. Plaintiff's complaint alleges various constitutional violations by government  
25 officials related to his state court criminal conviction and subsequent sentencing on March 4, 2019.  
26 *See* Docket No. 1-1.<sup>1</sup> He seeks monetary damages and an order from this Court discharging him  
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28 <sup>1</sup> This is the main thrust of Plaintiff's complaint, but it also references in conclusory manner  
alleged issues with respect to Plaintiff's conditions of confinement. *See id.* at 6. To the extent  
Plaintiff wishes to proceed on such claims, nothing herein prevents him from engaging in the

1 from state incarceration. *See id.* at 9. In short, Plaintiff wants this Court to overrule the state  
 2 court's judgment. It is well-settled that a federal district court does not have appellate jurisdiction  
 3 over a state court, whether by direct appeal, mandamus, or otherwise. *See, e.g., Rooker v. Fidelity*  
 4 *Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). The  
 5 Supreme Court has held that a § 1983 action cannot be used to collaterally attack a criminal  
 6 conviction unless the conviction or sentence has been reversed on direct appeal, expunged by  
 7 executive order, declared invalid by a state tribunal authorized to make such a determination, or  
 8 called into question by a federal court's issuance of a writ of *habeas corpus*. *See Heck v.*  
 9 *Humphrey*, 512 U.S. 477, 484 (1994). To the extent a prisoner is contending that he is entitled to  
 10 an order from a federal court that he be released from prison, his exclusive remedy is to file a writ  
 11 of *habeas corpus*. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995).<sup>2</sup>

12 In light of the above, the undersigned **RECOMMENDS** that this case be **DISMISSED**  
 13 without prejudice to Plaintiff seeking appropriate relief through the state court processes, such as  
 14 through the filing of an appeal, or through the filing of a writ of *habeas corpus* at an appropriate  
 15 juncture.

16 Dated: August 22, 2019

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 19 Nancy J. Koppe  
 20 United States Magistrate Judge

## 21 NOTICE

22 This report and recommendation is submitted to the United States district judge assigned  
 23 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and  
 24 recommendation must file a written objection supported by points and authorities within fourteen  
 25 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file  
 26 \_\_\_\_\_  
 27 required administrative process within the prison and filing a separate lawsuit limited to those  
 28 issues as may be appropriate.

<sup>2</sup> The Court need not identify herein all of the obstacles to Plaintiff proceeding with this case in light of the recommendation made herein. The Court notes, however, that it appears both prosecutorial and judicial immunity may apply.

1 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951  
2 F.2d 1153, 1157 (9th Cir. 1991).